



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.119/CTK/2021
Assessment Year : 2014-2015

Gajalaxmi Business Enterprises Pvt Ltd., Gandhi Road, Biramitrapur, Rourkela	Vs.	ACIT, Rourkela Circle, Rourkela
PAN/GIR No.AADCG 0643 F		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri Charan Dass, Sr DR

Date of Hearing : 03 /11/2022
Date of Pronouncement : 03/11/2022

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the ld CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 29.7.2021 in Appeal No.ITBA/NFAC/S/250/2021-22/1034498289 (1) for the assessment year 2014-15.

2. None appeared on behalf of the assessee when the matter was called for hearing. Shri Charan Dass, Sr DR appeared for the revenue.

3. The appeal is time barred by 42 days. The assessee has filed condonation petition dated 17.12.2021, stating the reasons in filing the appeal delay by 42 days. Ld Sr DR did not oppose the condonation

petition. In view of above, we condone the delay of 42 days and admit the appeal for hearing.

4. It was submitted by Id Sr DR that the issue involved in this appeal is delayed payment of PF and ESI in respect of employees contribution. Ld Sr DR submitted that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd vs CIT in Civil Appeal No.2833 of 2016 dated 12.10.2022, wherein, the Hon'ble Supreme Court has categorically held that if the employees contribution to PF and ESI has been paid beyond the time prescribed under the relevant PF Act, then same is not allowable under section 43B even after the payment has been made before the due date of filing of return under the Income tax Act. It was the submission that the amount of employees contribution to PF and ESI, which has not been paid within the due date as prescribed under the relevant Act, has been held by Hon'ble Supreme Court to be not allowable u/s.36(1)(va) of the Act. It was the submission that the Hon'ble Supreme Court in paras 52 & 53 has also categorically held that the provisions of section 43B would not apply to the employees' contribution to PF and ESI.

5. We have considered the submissions of Id Sr DR. Admittedly, the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd(supra) has categorically held that the employees contribution to PF and ESI to the extent it is not paid within due date prescribed under the PF Act, is not

allowable u/s.36(1)(va) of the Act. The Hon'ble Supreme Court has also admittedly held that the provisions of section 43B would not apply to the provisions of section 36(1)(va) of the Act in respect of employees contribution. Respectfully following the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd(supra), we are of the view that the delayed payment in respect of employees contribution to PF and ESI is not allowable.

6. In the case of Nirakar Security & Consultancy Services Pvt Ltd vs ITO in ITA No.98/CTK/2022 for Assessment Year 2016-17, order dated 17.10.2022, the Co-ordinate Bench of this Tribunal after considering the arguments of Id AR, has restored the issue to the file of the Assessing officer with the following directions:

"6. Liberty is granted to the Id AR to make all submissions in respect of allowability of disallowed contribution of the employees to PF and ESI under other relevant provisions in the interest of justice. This direction is being given because Id AR has submitted that as the amount is not allowable under section 36(1)(va) of the Act and same is also not covered under section 43B of the Act, the amount of delayed contribution to PF and ESI in respect of employees contribution would be treated as income in the hands of the assessee u/s.2(24)(x) and on subsequent payment of the same, it would be a business expenditure, which can be claimed u/s.37(1) of the Act. We are not expressing any opinion in regard to his arguments as it has not been examined by the lower authorities. Liberty is also granted to the assessee to raise all arguments as are found necessary by him before the lower authorities."

7. As the issue in the present appeal is also identical to the issue in the case of Nirakar Security & Consultancy Services Pvt Ltd.,(supra), on identical findings the issue in this appeal is restored to the file of the AO for re-adjudication after granting the assessee adequate opportunity of being heard.

8. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 3/11/2022.

SD/-
(Arun Khodpia)
ACCOUNTANT MEMBER

Cuttack; Dated 3/11/2022
B.K.Parida, SPS (OS)

SD/-
(George Mathan)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant: Gajalaxmi Business Enterprises Pvt Ltd., Gandhi Road, Biramitrapur, Rourkela
2. The Respondent: ACIT, Rourkela Circle, Rourkela
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack